

PROCEDURAL HINTS AND REQUIREMENTS

FOR TRIALS

Judge Charles L. Brieant

The Court intends to begin the trial on time and appreciates the efforts of counsel, witnesses, and parties, to be available when needed. Do not leave the Courtroom unless a recess is declared. At the beginning of the trial day, do not expect to have a hearing in the absence of the jury if this means starting late with the jury.

Jury Selection

The Court conducts voir dire of the jury using its own questions and those submitted by counsel, in writing, when appropriate. Attorneys must inform the Clerk orally of the identity of all persons who will be sitting at counsel table during the trial, and their affiliations.

Undisposed of pre-trial issues will be resolved at or prior to the beginning of the trial. However, it is the responsibility of counsel to bring them to the attention of the Court.

Jury Selection Procedures - Civil Cases

The Court will empanel seven or eight trial jurors, or more in a long case. Each side has three peremptory challenges to be exercised in three rounds of one challenge each. Plaintiff exercises the first challenge, leaving defendant with the last challenge. Each seat will be refilled as a challenge is exercised. If counsel for a party does not exercise a challenge in a particular round, that challenge is waived and cannot be used at a later time, although remaining challenges may be used against any juror in the box.

Multiple parties united in interest must exercise their challenges jointly. The Court, on application, may award separate or additional challenges, but this is done sparingly. Challenges

for cause must be presented to the Court at a side bar conference prior to the exercise of peremptory challenges.

Criminal Cases

Procedure is similar as for civil cases, except defendant or defendants have ten peremptory challenges, and the Government six, to be exercised in six rounds, with the defendant(s) receiving two challenges in rounds one through four, and one challenge each in rounds five and six. The Government exercises one challenge in each of the six rounds. Alternates will be selected separately after the main panel is completed, with not less than two peremptory challenges.

Opening Statement

An opening statement should be a concise representation to the jury of the facts which your side of the case expects to prove, or your position as to facts which the other side has undertaken to prove. It is not a place for a discussion of the law or an appeal to emotion or prejudice. The contemporaneous objection requirement applies to opening and closing statements. Motions to dismiss on the basis of the opening statement are not entertained. Plaintiff(s) in a civil case will open and close first in the absence of agreement or a specific direction of the Court.

Conduct of Trial

Do not run out of witnesses. Witnesses will be taken out of order if the next witness is unavailable, and doctors' testimony will be taken whenever possible at a time convenient to the doctor, even if it means interrupting the testimony of another witness.

Attorneys speaking on the record must stand. There is to be no cross-discussion on the record. An attorney may, at any time, without asking leave, walk to the adversary's table to confer privately with opposing counsel. Such discussion shall not be audible to the jury. Offers to stipulate shall not be made in the

presence of the jury, unless previously agreed to between the attorneys in the absence of the jury. Stipulations may be oral, but preferably should be in writing, and received as an exhibit.

Questions and arguments are to be delivered from the lectern. Counsel may approach the witness or the Clerk without asking leave whenever it is necessary. If counsel is standing near the witness for the purpose of pointing something out on an exhibit, opposing counsel also may be present to observe first hand what is being pointed out. Do not stand between the witness and the jury.

Objections

It is sufficient to stand and say, "I object," or "Objection." Do not argue or state grounds of objections in the presence of the jury unless asked to by the Court. If not satisfied with the ruling, counsel may hand up a note or request to approach the bench (for a side bar conference). If the Court does not understand the basis for the objection, it will hear counsel and consider the issue either at the next recess or at a side bar conference with counsel for all parties and the court reporter present.

Court Reporter

Please respect the Court Reporter's function. Speak distinctly; do not speak while someone else is speaking. When referring to an exhibit, be sure to mention it by number or letter so that the record is clear as to what is being discussed. Answers given by a witness relating to distances in the courtroom or objects before the witness should be clarified by a statement for the record so that the transcript will convey a clear report of what took place at trial.

When depositions or documents are read, the reader should proceed slowly enough for the Court Reporter to record what is being said. Depositions are to be read by expressing the word "Question" and then reading the question, then expressing the word "Answer" and reading the answer.

No deposition is to be used for any purpose at trial unless the original has first been handed up to the Court.

Lists for Court Reporter

If the spelling of names of people, places or things is important to you, give a list of such words to the Court Reporter at the start of trial. The trial will not be delayed by failure to do so, and the Court Reporter will use phonetic spelling rather than stop proceedings to obtain the proper spelling.

Exhibits

Except where otherwise directed by the Court, each side of the case keeps track of its own exhibits.

All exhibits received in evidence, except dangerous items such as narcotics, are automatically sent into the jury room at the commencement of jury deliberations. A redacted copy of the Indictment containing only those matters being submitted for verdict is also sent into the jury room, but pleadings in civil cases are not. Counsel are responsible to confirm with the Clerk that those things sent into the jury are genuine and actually have been received in evidence.

Exhibits which contain extraneous matter, not admissible, should be redacted prior to trial, and surplus writing on the back of photographs, etc., should be obscured. The Court will not be delayed by such matters during trial.

Exhibits not in evidence may not be read from, and allowing a witness to do so may "open the door" for otherwise inadmissible documents. Counsel may pass to the jury or read from exhibits which are in evidence, upon obtaining leave of the Court. Blow-ups, models, etc. may not be used without prior permission. Witnesses, except for physicians, should not be asked to read exhibits.

Interrogation

Questions which constitute speeches on the part of counsel are forbidden. Similarly, questions which begin with "Didn't you testify" or "You testified" or "I believe you testified" or equivalent verbiage, are forbidden. Whatever the witness testified to, the jury has already heard, and such questions are deemed to violate Rule 403, F.R.E. After an inconsistent answer has been given, it is then permissible, if necessary, to remind the witness of his or her prior testimony. However, such matters properly may be reserved for the closing argument or summation.

Compound or leading questions should be avoided. Questions which start out "Do you recall" are essentially useless; the witness who does not recall can say so without prompting.

It is not necessary to repeat the direct testimony during cross-examination. Don't waste time. Questions should be simple, and clear enough to support a perjury prosecution if answered falsely.

Counsel are not to comment on the substance or validity of the witness' answer. This includes such interjections as "O.K." or "That's right" or "Uh Huh," or anything of that nature. All such comments should be reserved for summation.

Traditional decorum should be observed at all times. This means that rudeness or shouting are to be avoided, and all witnesses should receive respect and common courtesy. Counsel do not admonish witnesses. Nor is it necessary to greet witnesses before framing questions.

Closing Argument

A closing argument should be limited to discussion of the evidence and the ultimate factual conclusions or inferences which the speaker wishes to have the jury reach or reject. The Court will explain its proposed jury charges to all counsel, as required by the rules, before the closing arguments are given. The Court, however, reserves the right, when the jury is charged, to comment on any improper or unfounded red herring argument made during summation.

Miscellaneous

No letter or paper is to be delivered to the Court unless it has been served on opposing counsel.

Since electronic tape recording equipment is available, the Court sends its jury instructions into the jury room in the form of a tape recorded cassette.

Post-verdict motions must be made within the time permitted by the Rules. Enlargements of time to make such motions are rarely approved, and such motions will not be scheduled in criminal cases to be heard on the same date set for imposition of sentence.

Law Clerks and the Deputy Court Clerk cannot give legal or procedural advice, although it is their mission to keep matters progressing smoothly and assist the Court in completing its business. Ordinarily, it will not be necessary or appropriate to refer, on the trial record or in open court, to oral discussions with chambers staff.